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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/705,379	11/03/2000	Troy M. Swartwood	P-0555.10023	5949

7590

06/26/2003

Birdwell Janke and Durando PLC  
1100 6TH Ave. Ste. 1400 SW  
Portland, OR 97204

EXAMINER

BRAY, WAYMOND D

ART UNIT

PAPER NUMBER

3725

DATE MAILED: 06/26/2003

Please find below and/or attached an Office communication concerning this application or proceeding.



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7590 05/02/2003

Garth Janke  
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1925 Standard Insurance Center  
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RECEIVED

MAY 28 2003

TECHNOLOGY CENTER R3700

# Office Action Summary

Application No.  
**09/705,379**

Applicant(s)  
**Swartwood. et al**

Examiner  
**W. Donald Bray**

Art Unit  
**3725**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13-16 and 19-25 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-16 and 19-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some\* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ 6) ☐ Other:

**DETAILED ACTION**

1. This application, serial no. 09/703,379 is a Reissue Application of U.S. patent No. 5,979,522 having a patent date of November 9, 1999.

In response to this action, applicant is required to inform the Patent and Trademark Office of any litigation relating to the patent sought to be reissued, and any other information, which may be material to the examination of this application. This is a continuing obligation and includes interferences, reissues, reexaminations as well as litigation (See: 37CFR 1.178(b) and 38 CFR 1.56)

**Status of Claims and Housekeeping**

2. As a housekeeping matter, please note the status of the claims now presented for examination in this reissue application:

- Claims 1-12 and 17 have been cancelled by original presentation.
- Claims 13, 14 and 16 have been amended; claims 19-25 have been added; and claim 18 cancelled by amendment dated December 3, 2002.

Accordingly, the claims present before the Examiner in this reissue application are 13-16 and 19-25.

### **Information Disclosure Statement**

3. Receipt is hereby acknowledged of two (2) Information Disclosure Statements (I.D.S.) dated November 3, 2000 and September 11, 2002. The I.D.S. have been placed of record in the file and signed, dated, and initialed copies of each are included with this action.

### **Original Letters Patent**

4. Surrender is hereby acknowledged of the original Letters Patent of Patent No. 5,979,522. The document has been placed of record in the file and attached thereto.

### **Reissue Declaration**

5. The reissue oath/declaration filed with this application is defective (see 37 CFR 1.175 and MPEP § 1414) because of the following: The Declaration fails to include an adequate statement of at least one error being corrected by this reissue application.

Claims 13-16 and 19-25 are rejected as being based upon a defective reissue declaration under 35 U.S.C. 251. See 37 CFR 1.175. The nature of the defect is set forth above.

Receipt of an appropriate supplemental oath/declaration under 37 CFR 1.175(b)(1) will overcome this rejection under 35 U.S.C. 251. An example of acceptable language to be used in the supplemental oath/declaration is as follows:

"Every error in the patent which was corrected in the present reissue application, and is not covered by a prior oath/declaration submitted in this application, arose without any deceptive intention on the part of the applicant."

### **Signature of Party of Interest**

6. This application is objected to under 37 CFR 1.172(a) as the assignee has not established its ownership interest in the patent for which reissue is being requested. An assignee must establish its ownership interest *in order to support the consent to a reissue application required by 37 CFR 1.172(a)*. The submission establishing the ownership interest of the assignee is informal. There is no indication of record that the party who signed the submission is an appropriate party to sign on behalf of the assignee. 37 CFR 3.73(b).

A proper submission establishing ownership interest in the patent, pursuant to 37 CFR 1.172(a) is required in response to this action.

7. The person who signed the submission establishing ownership interest has failed to state his/her capacity to sign for the corporation or other business entity, and he/she has not been established as being authorized to act on behalf of the assignee. See MPEP § 324.

### **Treatment of Claims**

8. Claims 13-16 and 19-25 are outside the imposition of a rejection based on the prior art. The prior art fails to show or fairly teach the location and clamping function of the second clamping portion.

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9. No claim is allowed.

Any inquiry concerning the content of this communication or earlier communications from the examiner should be directed to W. Donald Bray whose telephone number is (703) 308-1871. The examiner can normally be reached on Monday through Friday from 8:30am to 3:00pm. Any inquires concerning other than the content of this and previous communications, such as missing references or filed papers not acknowledged, should be directed to the Customer Service Representative, Tech Center 3700, (703) 306-5648.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alan Ostrager, can be reached on (703) 308-3136. The fax phone number for this Group is (703) 305-3579.

In order to reduce pendency and avoid potential delays, Group 3720 is encouraging faxing of responses to office actions directly into the Group at (703) 305-3579. This practice may be used for filing papers not requiring a fee. It may be also used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify Examiner Bray of Art Unit 3725 at the top of your cover sheet.

Any inquires of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1148.

Bray/DL

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April 28, 2003

*W. D. Bray*  
**W. DONALD BRAY**  
**PRIMARY EXAMINER**